

REMARKS

In the Office Action dated July 14, 2004, an election requirement under 35 U.S.C. §121 was issued.

The Office Action alleges that there are three patently distinct species found in the present application: "Species I shown in Figure 1, Species II shown in Figure 2, and Species III shown in Figure 4." In response, Applicants provisionally elect Species I, with claims 1-2, 4-13, and 15 readable thereon.

Nonetheless, Applicants first submit that there would not be a serious burden on the Examiner to examine all of the claims (Claims 1-16) in the application. Furthermore, Applicants respectfully disagree with the present Office Action's assertion that there is no genus claim and submits that the provisionally elected claims 1 and 8 of Species I are generic and read on the embodiments shown in Figures 2 and 4. Thus, the species election requirement should be withdrawn as will be discussed below.

Contrary to the Patent Office position, Applicants believe that the alleged Species are not so different in subject matter that an examination of all of claims 1-16 on the merits can be made without placing undue burden on the Patent Office. In this regard, the claims in each of the alleged Species I-III relate to compensating changes in an SRS-Induced Power Exchange when disconnecting channels from or connecting channels to an optical data transmission path of a WDM system. Both independent claims 1 and 8 are genus claims covering the concept as described above in both method and system format respectively. The dependent claims, as well as Figures 2 and 4, simply distinguish between different arrangements used with the system of Figure 1, which independent claims 1 and 8 can further encompass in accordance with the present application.

Applicants respectfully submit that Figures 2 and 4 are usable in the context of the general system of Figure 1, and that claims 1 and 8 are readable on Figure 1. However, Applicants also respectfully submit that claims 1 and 8 are also readable on Figures 2 and 4 as well. For example, Figure 2 illustrates the “at least two systems which operate at different speeds to influence tilting of a spectrum of data signals in the optical data transmission path,” as claimed in claim 1, and also illustrates the “at least one path section arranged ... for determining and compensating spectral tilting of transmitted data signals” as claimed in claim 8. Similarly, Figure 4, although illustrating an alternate embodiment, nonetheless illustrates the claim elements described above. As such, Figure 1 illustrates the concept of a system for compensating changes in an SRS-Induced Power Exchange when disconnecting channels from or connecting channels to an optical data transmission path of a WDM system, and Figures 2 and 4 illustrate alternate embodiments of how the compensating of the system is determined and controlled. Thus, Applicants believe that the alleged species are not, in fact, inventions that are classified as species.

As stated above, if the election requirement is maintained, Applicants provisionally elect Species I, and claims 1-2, 4-13 and 15 readable thereon. Should the election requirement be made final, Applicants reserve the right to file a divisional application directed to non-elected claims.

Respectfully submitted,

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